Editor's note: Appealed -- aff'd, sub nom. U.S. v. Brown, No. 80-1448 (10th Cir. March 15, 1982) 672 F.2d 808

SCOTT V. BROWN

IBLA 73-405 Decided November 5, 1973

Appeal from decision of the Colorado State Office, Bureau of Land Management, notifying lessee of non ! renewal of lease C-0102704.

Affirmed.

Mining Occupancy Act: Generally ! ! Mining Occupancy Act: Conveyances

The term "interest" as used in the Act of October 23, 1962, 76 Stat. 1127, as amended, 30 U.S.C. § 701 (1970), includes any estate in lands, including a lease.

The determination of the extent of the relief to be granted to a qualified applicant under the Mining Claims Occupancy Act is committed to the discretion of the Secretary of the Interior as to lands within the jurisdiction of this Department, and where the determination was made to award an applicant a lease for a term of ten years, a decision not to renew the lease will not be disturbed where the determination rests upon a rational basis.

APPEARANCES: Scott V. Brown, pro se.

OPINION BY MR. FISHMAN

Scott V. Brown has appealed from a decision by the Colorado State Office, Bureau of Land Management, dated April 13, 1973, which notified appellant of the Bureau's determination not to renew a lease held by him, issued pursuant to the Mining Claims Occupancy Act.

On January 1, 1964, George W. Trout was granted a lease pursuant to 30 U.S.C. §§ 701-709 (1970), commonly referred to as the Mining Claims Occupancy Act. The term of the lease is for a period of ten years, and will terminate on December 31, 1973.

Trout occupied the premises for several years under the lease. In 1970, he moved to Grand Junction, Colorado, for reasons of health. He sold the improvements and subleased the premises to appellant on March 26, 1972. Trout died testate on December 15, 1972, and devised his leasehold estate to appellant.

Unaware of Trout's death, the State Office sent a decision, dated January 2, 1973, to his place of residence in Grand Junction, informing Trout of the Bureau's decision not to renew the lease. Upon learning of Trout's death, and the devise of his leasehold estate to appellant, the State Office sent a decision, dated April 13, 1973, to appellant. The latter decision amended the former decision by recognizing appellant as the record holder of the lease, but remained unchanged regarding the determination not to renew the lease.

In making its determination not to renew the lease, the Bureau pointed out that the area involved has the potential to be developed into a very desirable public overnight camp and picnic rest!stop facility, and that with the increasing visitor use in the area, this type of use would be greater. The record also shows that the land in issue as well as the surrounding domain has been classified for retention under the Classification and Multiple Use Act of September 19, 1964, 78 Stat. 986, 43 U.S.C. §§ 1411 et seq. (1970).

Appellant argues that when Trout was granted a lease pursuant to the Mining Claims Occupancy Act, it was understood at that time that Trout would receive a patent to the land upon official survey, and that it is error to claim that the land now is needed for a public use since Trout deserved the title. He asserts that the land should be surveyed, that the Government is under an obligation to convey title to the property to him, and that the camp!ground use avoids the basic legal commitment. He contends that the Mining Claims Occupancy Act does not provide for a ten!year lease and that he should be granted title to the land in accordance with section 8 of the Act, or in the alternative, that he should be considered for the grant of an interest in another tract of land as is provided for, he asserts, in section 4 of the Act.

Once an applicant has qualified under the Mining Claims Occupancy Act, for land under the administrative jurisdiction of the Department, it is the obligation of the Bureau of Land Management to determine what, if any, interest the applicant will be offered. The decision of the Bureau will not be disturbed where it rests on a rational basis and is consistent with the public interest. Harry E. Hawkenson, 13 IBLA 237 (1973); Arland E. Purington, 10 IBLA 118 (1973); Ralph W. Griffen, 10 IBLA 289 (1973). When the Bureau determined that Trout was a qualified applicant, a ten!year lease was granted to him. The decision rested upon a rational basis because the land in issue was unsurveyed at the time, and land cannot be patented unless it is surveyed. While appellant takes issue with the nature of the estate granted to his predecessor in interest, it is well settled that the determination of the extent of the interest to be granted under section 1 of the Mining Claims Occupancy Act is committed to the discretion of the Secretary of the Interior as to lands within the jurisdiction of this Department, and leases are included within the ambit of the Act. See, e.g., Funderberg v. Udall, 396 F.2d 638 (9th Cir. 1968); Rulon Stephen Scott, 11 IBLA 287 (1973); 43 CFR 2550.0-5(c).

When Trout devised his leasehold estate to appellant, the only interest which passed to appellant was the remainder of the ten!year term. The Government is under no obligation to renew the lease or convey any title to appellant either to the land in issue, or to an alternative tract. Appellant's reliance on section 4 of the Act, for relief in the nature of an alternative tract, is inapposite. Section 4 only applies to a situation where the land in question has been withdrawn in aid of a function of a Federal department or agency other than the Department of the Interior. The land in question is under the jurisdiction of the Department of the Interior and section 4 of the Act, therefore, is not applicable to the facts of this case.

The Mining Claims Occupancy Act was enacted by Congress as a relief measure designated to aid qualified mining claimants on whom hardship would be imposed in the event they were required to move from their long!established homes which were placed on unpatented mining claims. In our view, the relief contemplated by the Act was afforded to the deceased Mr. Trout. While the Bureau at one time may have considered granting a fee title to Mr. Trout, the spirit of the Act has been fulfilled insofar as he is concerned. Appellant contends that he also is entitled to relief under the Act. He relies on section 8 of the Act which provides:

> Rights and privileges to qualify as an applicant under this Act shall not be assignable, but may pass through devise or descent.

In our view reliance upon this section of the Act lends no support to appellant's argument. The rights and privileges to which section 8 refers do not include the interest conveyed to a qualified applicant. Once the determination has been made that an occupant of an unpatented mining claim is a qualified applicant, section 8 no longer has any application. In the instant case the determination was made long ago that Trout, appellant's predecessor in interest, was qualified as an applicant under the Act. Trout was granted the relief contemplated by the Act when the Bureau conveyed a ten ! year lease to him. Had Trout died before the Bureau made a determination that he was a qualified applicant, Trout's rights and privileges to qualify for relief under the Act could have passed by devise or descent, but such a situation never arose. The fact that appellant acquired by devise the remainder of the leasehold conveyed to Trout does not bring appellant within the ambit of section 8 of the Act.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision is affirmed.

Frederick Fishman
Member

We concur:

Joseph W. Goss
Member

Anne Poindexter Lewis
Member